

**IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE  
BEFORE**

**HON'BLE SHRI JUSTICE VIVEK RUSIA**

**ON THE 5<sup>th</sup> OF SEPTEMBER, 2023**

**WRIT PETITION No. 21721 of 2023**

**BETWEEN:-**

**AMIR S/O NIHAL, AGED ABOUT 27 YEARS, OCCUPATION: BUS  
OPERATOR R/O 70 NEAR ISAIYON KA KABRISTAN PUTLIGHAR OLD  
R.T.O. SHAHJAHANABAD BHOPAL (MADHYA PRADESH)**

**.....PETITIONER**

**(MS. MINI RAVINDRAN, LEARNED COUNSEL FOR THE PETITIONER.)**

**AND**

- 1. THE STATE OF MADHYA PRADESH SECRETARY VALLABH  
BHAWAN BHOPAL (MADHYA PRADESH)**
- 2. REGIONAL TRANSPORT OFFICER RAJGARH (MADHYA  
PRADESH)**

**.....RESPONDENTS**

**(SHRI SUDARSHAN JOSHI, LEARNED GOVT. ADVOCATE FOR THE  
RESPONDENTS/STATE.)**

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*This petition coming on for hearing this day, the court passed  
the following:*

**ORDER**

The petitioner has filed the present petition challenging the seizure memo dated 31.10.2022 (Annexure P/3) whereby the vehicle bearing Registration No. MP-04-PA-9978 has been seized on account of non-payment of tax.

1. The petitioner is registered owner of the aforesaid vehicle (bus) and was holding valid fitness certificate at the time of its seizure. According to the petitioner, on 31.10.2023 the vehicle was checked and it was seized without any notice. The petitioner is challenging the impugned seizure solely on the ground that before seizure no assessment of tax was undertaken by the respondents. Under sections 8(3) and 8(4) of the M.P. Motoryan Karadhan Adhiniyam, 1991 (hereinafter referred to as “the Act of 1991” for short) it is obligatory on the part of the taxing authority to make an inquiry as it deem fit and after giving to the owner an opportunity of being heard, determine by order in writing, the tax payable by the owner and intimate the same to him. It is further submitted by the learned counsel that under sub-section (4) of Section 8, where the owner fails to file a declaration required under sub-section (1) or (2), the taxation authority may, on the basis of information available with it and after giving to the owner an opportunity of being heard, by an order in writing, determine the amount of tax payable by such owner. According to the petitioner the vehicle is liable to be seized u/s. 16 of the Act of 1991 only on account of non-payment of tax, penalty and interest due. Therefore, such seizure of the vehicle is illegal, arbitrary and liable to be set aside. In support of contentions, Ms. Ravindran learned counsel placed reliance over the order passed by the co-ordinate Bench of this Court in the case of *Sanjay Keshwani V/s. State of M.P.* (W.P. No.2969/2017 decided on 27.2.2017).

2. On the other hand, Shri Sudarshan Joshi, learned Govt. Advocate

appearing for the respondents/State, contended that the petitioner is having an alternative and efficacious remedy of appeal u/s. 20-B of the Act of 1991 to challenge the seizure of the vehicle u/s. 16. Even the issued violation Principal of Natural Justice can be examined by the appellate authority. Therefore, the writ petition is not maintainable for want of alternative and efficacious remedy.

3. Learned counsel for the petitioner has vehemently argued that without there being any assessment of tax, the vehicle cannot be seized. But in the seizure memo, the reason for seizure is mentioned in Para 7(3) and according to which, there is an order passed by the Taxing Authority, Rajgarh No. 450/2022 dated 26.10.2022, as ch there is penalty of Rs.46,226/- which has not been deposited. The petitioner has not given any explanation for this assessment of penalty in the entire petition. Therefore, it cannot be said that there is no such order by the taxing authority before the seizure.

4. Even otherwise, Section 16(1) of the Act of 1991 provides that the Taxation Authority or any other officer authorised by the State Government may at all reasonable time enter into and inspect any motor vehicle or premises where he has reason to believe that a motor vehicle is kept for the purpose of verifying whether the provisions of this Act or any rules made thereunder are being complied with. On failure to produce the documents as provided under sub-section (2) of Section 16, the Taxation Authority or any other officer authorised by the State Government, if he has reasons to believe that the motor vehicle has been or is being used without payment of tax has the power

to seize and detain such a motor vehicle. Sub-section (4) as inserted by on 10.10.1992 provides that where a motor vehicle has been seized and detained under sub-section (3), the owner or the person incharge of such vehicle may apply to the Taxation Authority or any officer authorised by the State Government together with relevant documents for the release of such vehicle and after verification of such documents, if such authority is satisfied that no amount of tax is due in respect of that vehicle, may by an order in writing release such vehicle. In the present case, in the entire petition the petitioner has not stated that there is no such tax liability on the vehicle / bus . The petitioner could have approached the deposit slip before the Taxation Authority to satisfy about the payment of tax, penalty or any other dues. Therefore, before approaching this Court, the petitioner ought to have exhausted the remedy available u/s. 16(4) or the remedy available u/s. 20-B of the Act of 1991.

5. Similar view has been taken by this Court in the case of ***Shailendra Kumar Motwani V/s. State of M.P. : 2011(3) MPLJ 329*** whereby the petition challenging the seizure of the vehicle u/s. 16(3) of the Act of 1991 by the authority was dismissed as the remedy lies u/s. 16(4) of the Act of 1991. The Court has also held that the petitioner is having remedy of appeal u/s. 20. Similar view has also been taken by the Division Bench of this Court in the case of ***Ishwarlal V/s. State of M.P. : 2015(1) MPLJ 463***. Section 16(4) of the Act of 1991 is quoted below :

“16 (4) - Where a motor vehicle has been seized and

detained under sub-section (3), the owner or the person in charge of such vehicle may apply to the taxation Authority or any officer authorised in this behalf by the State Government together with the relevant documents for the release of the vehicle and if such authority or officer after verification of such documents, is satisfied that no amount of tax is due in respect of that vehicle, may by an order in writing release such vehicle.”

In view of the above, no case for interference is made out as the petition is not maintainable. However, the petitioner shall be at liberty to avail the remedy available u/s. 16(4) and 20 of the Act of 1991.

**( VIVEK RUSIA )**  
**JUDGE**

Alok/-